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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/598,028	WADA ET AL.	
	Examiner	Art Unit	
	CHRISTOPHER C. CAILLOUET	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 August 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-10 and 14-21 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 16 August 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 08/16/06.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-10 and 14-21, drawn to a method for producing a worn article in with side panels; side panels are formed by feeding an elastic member between a pair of sheet-like materials.

Group II, claim(s) 11-13, drawn to an absorbent article with side panels stretchable in an around-the-torso direction; side panels comprising of an elastic thread sandwiched between two sheet-like materials.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The common technical feature, side-panels formed from sandwiching an elastic member between two sheet-like materials does not make a contribution over the prior art of record. See Neculescu et al. (US 20040123938).

3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above

and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement

will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. During a telephone conversation with Mr. Mark Saralino on June 2, 2009 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10 and 14-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 3, 15, 17, 19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention. Claim 3, lines 11-17 recites the following limitations:

cutting the first divided laminate at a predetermined interval in the flow direction to obtain first cut panels; changing an attitude of a pair of first cut panels including two of the first cut panels adjacent to each other to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction; attaching the pair of first cut panels whose attitude has been changed to a sheet-like member to be the main body portion, one on a left side and the other on a right side of the sheet-like member;

It is unclear what is meant by "a pair of first cut panels". Does a pair of first cut panels mean two panels connected to one another but separated from the web of laminate material? Is it two distinct panel members separated from one another as well as from the web of laminate material? Is it a panel member cut from the each of the laminate webs to form a pair of side panels? Subsequent limitations in the claim, referring to "a pair of second cut panels", have the same issues.

7. Claim 6, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6, 17, and 18, lines 1-3 recites the following limitations:

wherein non-contractile portions where a contractile force from the elastic member is not active are formed in the laminate at a predetermined interval in the flow direction, and, in the step of cutting the laminate to obtain the cut panels, the laminate is cut along each non-contractile portion so that each cut panel includes at least a part of the non-contractile portion.

It is unclear what is meant by "wherein non-contractile portions where a contractile force from elastic member is not active are formed" because of the incoherence of the statement.

8. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8, lines 7-28 recites the following limitations:

cutting the first divided laminate at a predetermined interval in the flow direction to produce, for every iteration of the wavelength, a first cut panel and a second cut panel being generally in line symmetry with each other; cutting the second divided laminate at a predetermined interval in the flow direction to produce, for every iteration of the wavelength, a third cut panel and a fourth cut panel being generally in line symmetry with each other; spacing the first cut panel and the second cut panel apart from each other in the flow direction; spacing the third cut panel and the fourth cut panel apart from each other in the flow direction; changing an attitude of each of the first and second cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction; increasing a distance between the first cut panel and the second cut panel in a width direction of the laminate, which is generally perpendicular to the flow direction; changing an attitude of each of the third and fourth cut panels to an attitude that is obtained by a rotation of about 90 degrees with respect to the flow direction; increasing a distance between the third cut panel and the fourth cut panel in the width direction of the laminate; attaching the first cut panel and the second or third cut panel on a left side and a right side, respectively, of a sheet-like member to be the main body portion; and attaching the fourth cut panel and the third or second cut panel on the left side and the right side, respectively, of the sheet-like member to be the main body portion.

It is unclear how one would be capable of "attaching the first cut panel and the second or third cut panel on a left side and a right side," since it would be impossible to attach the first and second panels on the same side since they were spaced apart from one another in the width direction of the laminate (perpendicular to the flow direction). This same issue occurs again when "attaching the fourth cut panel and the third cut panel on a left side and right side."

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 4, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Durrance et al. (US 20020002358), as evidenced by Morman (US 5226992).

As to claim 1, Durrance et al. (Durrance) discloses a method of forming a diaper with side panels (Abstract; Fig. 1). As seen in Fig. 1 below, individual fastener strips

(118) are cut from webs of fastener material (116), rotated 90 degrees, spaced apart from one another, and then laminated to a web of body side liner material (104) (Fig. 1; paragraphs 110-112).

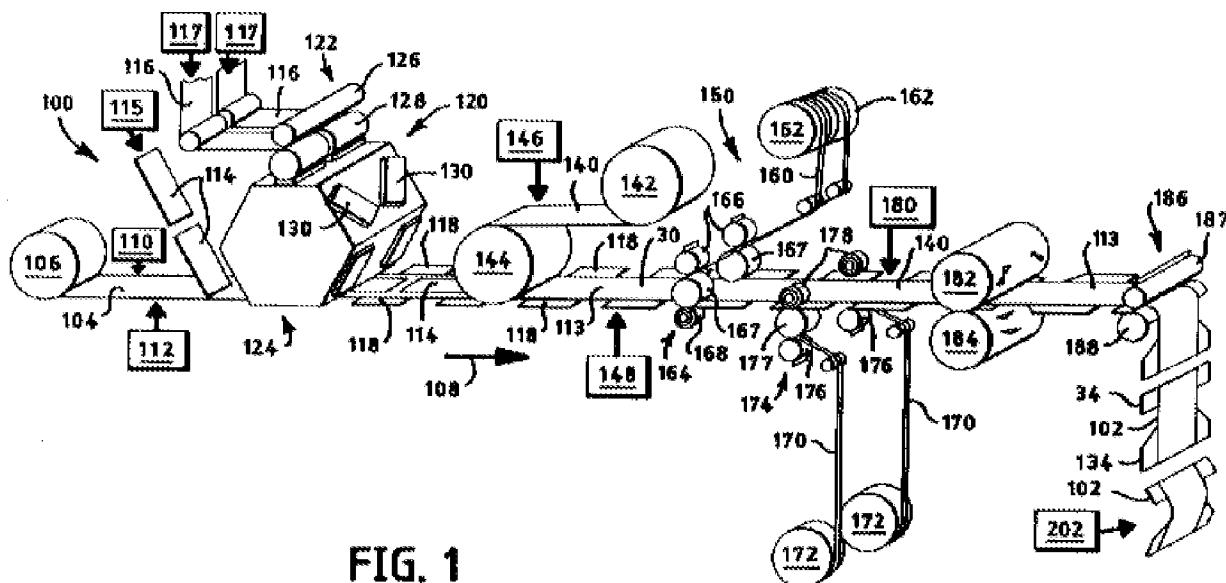


FIG. 1

Durrance discloses that the webs of fastener material (116) may comprise of an elastic material such as a neck-bonded laminate (NBL) (paragraph 94), such as the NBL material formed by the method of Mormon (US 5226992) cited in the specification (Id.). Mormon discloses a method of making NBL material wherein an elastic material is bonded to at least one neckable material (Abstract). Mormon discloses one embodiment of a neck bonded material wherein an elastic material (72) is sandwiched between two neckable material layers (52, 82) by feeding said elastic material between the neckable layers (52, 82) to obtain a laminate (Fig. 3; column 9, line 54 – column 10, line 27).

As to claim 4, the method of claim 1 is taught as seen above. Durrance teaches that the side panels may be trimmed, but not trimming of said panels is not required (paragraph 124).

As to claim 5, the method of claim 1 is taught as seen above. Durrance discloses that each panel includes at least one fastening element (Fig. 7).

As to claim 7, the method of claim 1 is taught as seen above. The method of Mormon discloses that the elastic and neckable materials are laminated in an extended state to where the neckable material gathers.

Claim Rejections - 35 USC § 102/103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McNichols (US 6667085) as evidenced by Morman (US 5226992).

McNichols discloses a method of making absorbent articles with side panels attached to the waist region of said article (Abstract). As seen in Fig. 1 below, the method comprises of: cutting an elastic laminate (110) along a wave shaped cut-off line to form two laminates; the laminates are then rotated 90 degrees relative to the flow direction and separated from one another in a cross/width direction; the two laminates

are then cut in a predetermined interval in the flow direction by an cutting apparatus (112); and thereafter attached to each side of a web of interconnected diapers (80) (column 7, lines 4-20).

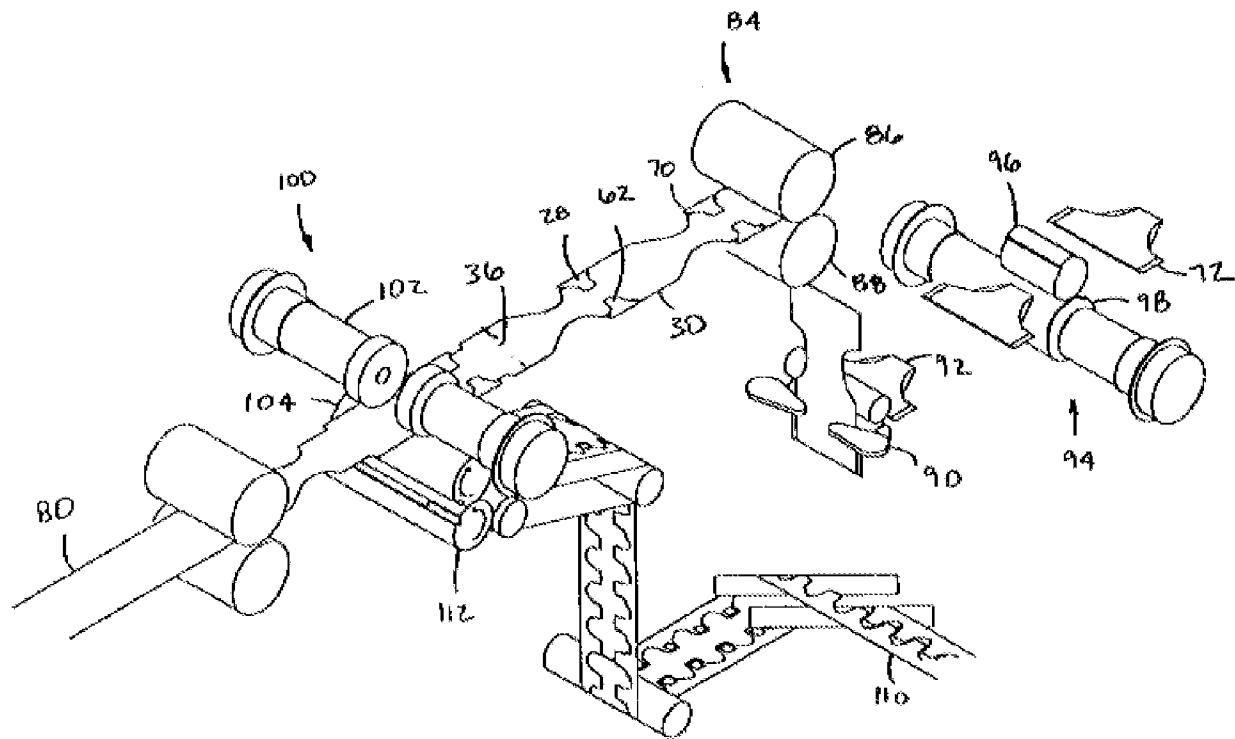


FIG. 1

McNichols discloses that the webs of fastener material (110) may comprise of an elastic material such as a neck-bonded laminate (NBL) (column 13, lines 25-41), such as the NBL material formed by the method of Mormon (US 5226992) cited in the specification (Id.). Mormon discloses a method of making NBL material wherein an elastic material is bonded to at least one neckable material (Abstract). Mormon discloses one embodiment of a neck bonded material wherein an elastic material (72) is

sandwiched between two neckable material layers (52, 82) by feeding said elastic material between a the neckable layers (52, 82) to obtain a laminate (Fig. 3; column 9, line 54 – column 10, line 27).

If it is found that McNichols doesn't specifically disclose cutting the web in a flow direction to form two laminate webs, it is the position of the Examiner that it is well known in the art to slit a single web of fastener material in a flow direction to form two webs of fastener material to apply to a diaper chassis web.

As to claim 14, the method of claim 2 is taught as seen above. The method of the above references as combined would form side panels without trimming.

Claim Rejections - 35 USC § 103

13. Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNichols (US 6667085) as evidenced by Morman (US 5226992), in view of Nease et al. (US 5705013).

As to claim 2, McNichols discloses a method of making absorbent articles with side panels attached to the waist region of said article (Abstract). As seen in Fig. 1 below, the method comprises of: cutting an elastic laminate (110) along a wave shaped cut-off line to form two laminates; the laminates are then rotated 90 degrees relative to the flow direction and separated from one another in a cross/width direction; the two laminates are then cut in a predetermined interval in the flow direction by an cutting

apparatus (112); and thereafter attached to each side of a web of interconnected diapers (80) (column 7, lines 4-20).

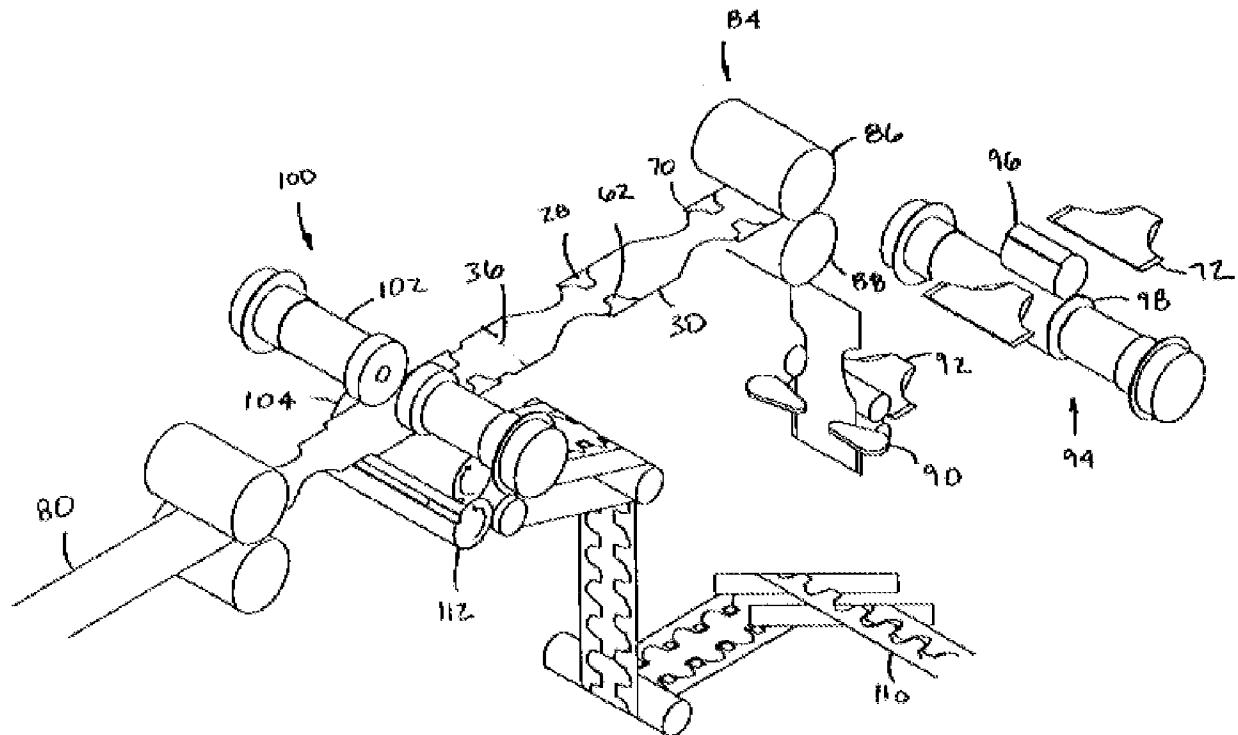


Fig. 1

McNichols discloses that the webs of fastener material (110) may comprise of an elastic material such as a neck-bonded laminate (NBL) (column 13, lines 25-41), such as the NBL material formed by the method of Mormon (US 5226992) cited in the specification (Id.). Mormon discloses a method of making NBL material wherein an elastic material is bonded to at least one neckable material (Abstract). Mormon discloses one embodiment of a neck bonded material wherein an elastic material (72) is sandwiched between two neckable material layers (52, 82) by feeding said elastic

material between a the neckable layers (52, 82) to obtain a laminate (Fig. 3; column 9, line 54 – column 10, line 27).

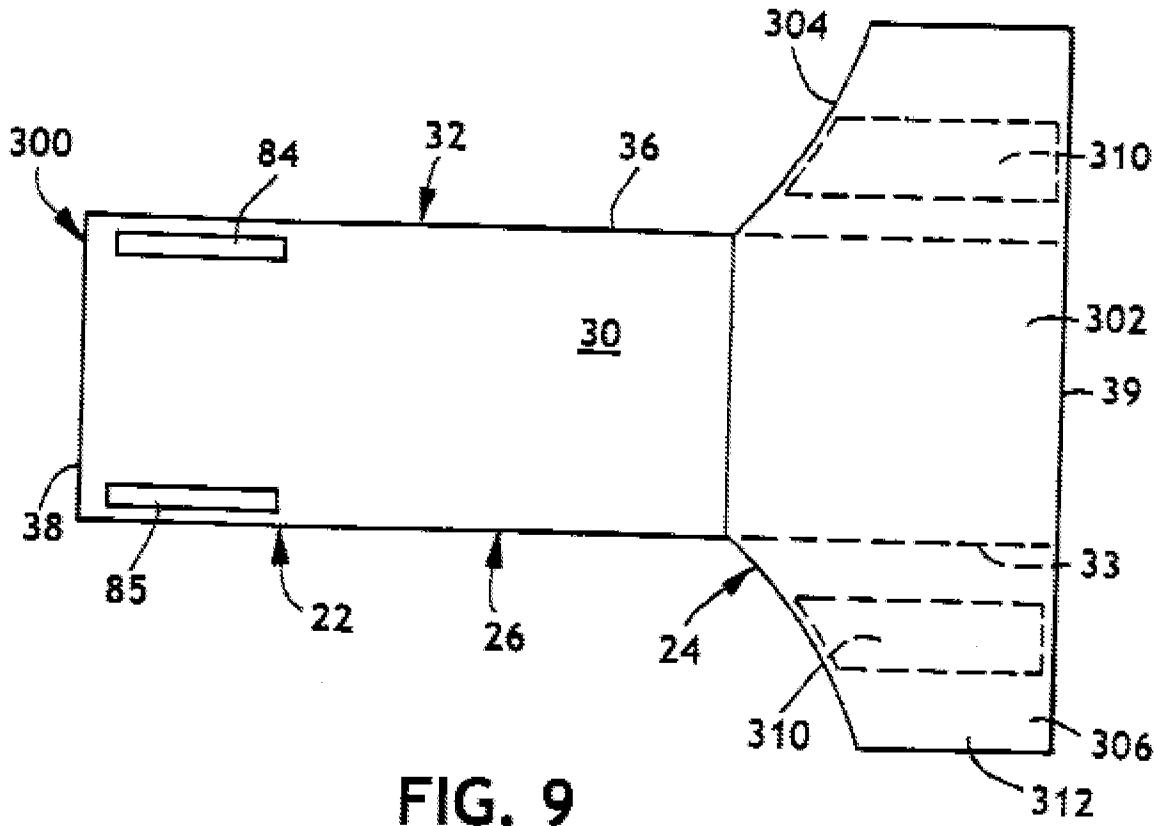
If it is found that McNichols doesn't specifically disclose cutting the web in a flow direction to form two laminate webs, it is the position of the Examiner that it is well known in the art to slit a single web of fastener material in a flow direction to form two webs of fastener material to apply to a diaper chassis web. Nease et al. (Nease) discloses a zero scrap method for manufacturing side panels for use with absorbent articles (Abstract). Nease discloses a method wherein a web of fastener material (201) is cut along a wave-shaped line (604) in the flow direction to produce a first (700) and second laminate (701) and there after said laminates are cut at a predetermined interval in the flow direction to obtain first and second cut panels (130) (Fig. 7; column 9, line 54 – column 11, line 14).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Nease into the method of McNichols because one of ordinary skill would have recognized the economic advantages of utilizing a zero-scrap method of producing side panels as taught by Nease.

As to claim 14, the method of claim 2 is taught as seen above. The method of the above references as combined would form side panels without trimming.

14. Claims 3, 8-10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (US 6645190) in view of Nease et al. (US 5705013) and Pohjola (US 5224405).

As to claims 3, 8 and 9, Olson discloses a method of making a diaper with side panels (Abstract). As seen in Fig. 9 below, Olson discloses that the diaper is formed by attaching a panel member (302) to the composite structure (30) (Fig. 9; column 17, lines 13-28). The panel member has elastic members (10) sandwiched between the facing layers (312, 314) (Fig. 10; column 17, lines 29-48).



Olson discloses that elastic material of the panel member (302) may be formed by known methods in the art, such as the NBL material formed by the method of Mormon (US 5226992) cited in the specification (column 14, lines 8-29). Mormon

discloses a method of making NBL material wherein an elastic material is bonded to at least one neckable material (Abstract). Mormon discloses one embodiment of a neck bonded material wherein an elastic material (72) is sandwiched between two neckable material layers (52, 82) by feeding said elastic material between the neckable layers (52, 82) to obtain a laminate (Fig. 3; column 9, line 54 – column 10, line 27).

Olson fails to disclose the specific method utilized in forming the side panel (302) from the web of elastic material in the method of Mormon. Nease et al. (Nease) discloses a zero scrap method for manufacturing side panels for use with absorbent articles (Abstract). As seen in Fig. 7 below, Nease discloses a method wherein a web of fastener material (201) is cut along a wave-shaped line (604) in the flow direction to produce identical first (700) and second laminate (701) webs and there after said laminate webs are cut at a predetermined interval in the flow direction to obtain first and second cut panels (130); thereafter said panels are bonded to a diaper web/composite structure (205) (Fig. 7; column 9, line 54 – column 11, line 14). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Nease into the method of Olson because one of ordinary skill would have recognized the economic advantages of utilizing a zero-scrap method of producing side panels as taught by Nease.

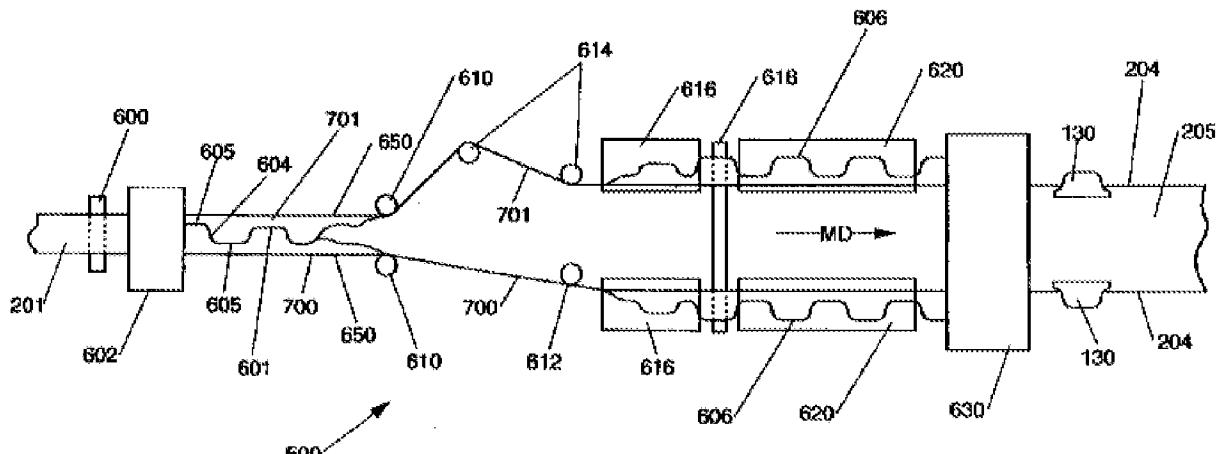


Fig. 7

Incorporating the teachings of Nease into the method of Olson would result in two identical laminate webs, when cut at a predetermined interval in the flow direction would form identical panel members (302) in the opposite orientation relative to one another, first and second panels on one side, third and fourth panels on the opposite side. Therefore, before applying the panel members (302) to the composite structure (30), said panels would need to be rotated 90 degrees relative to the flow direction. It is the position of the Examiner that methods of rotating and applying a discrete material member to a web of material is well known in the art and would have been obvious to one of ordinary skill at the time of the invention. Pohjola discloses a method and apparatus for cutting strips of material (18) from a web (12), holding and rotating said strips 90 degrees on a transfer roll (28), and placing/laminating said strips onto a moving second web of material (14) (Fig. 1; column 3, lines 7-53). It would have been obvious for one of ordinary skill at the time of the invention to incorporate a known successful method of rotating and placing a discrete side article onto web of material, such as the method of Pohjola, into the method of Olson because such a modification would have been well within his technical grasp.

As to claim 10, the method of claim 8 is taught as seen above. It would have been obvious for one of ordinary skill in the art to align the first and second laminates in the same phase to allow for a process to apply panel members to two webs of composite structures at the same time, doubling the through-put of the process.

As to claim 15, the method of claim 3 is taught as seen above. The method of the above references as combined would form side panels without trimming.

15. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durrance et al. (US 20020002358) as applied to claim 1 above, and further in view of Nakakado et al. (US 20040035521).

Durrance fails to disclose whether the side panel material (116) may comprise of a material that has intermittent elastic sections. Nakakado et al. (Nakakado) discloses a method for producing a web of material with intermittent elastic sections (Abstract). Nakakado discloses that the method comprises of: supplying an elastic member; stretching the elastic member; placing the stretched elastic member so that the elastic member spreads across a plurality of first webs divided in a transport direction; making a part of a second web loose in the transport direction while transporting the second web, thereby forming a loose portion; placing the first webs, on which the elastic member is disposed, on non-loose portions before and after the loose portion of the second web; and cutting the elastic member between adjacent first webs of the plurality of first webs (Fig. 1; paragraph 7). Applying elastics intermittently an only in required areas of the product to be formed allows for material and cost savings in the process. It would have been obvious for one of ordinary skill incorporate the elastic web forming method of Nakakado into the method of Durrance because one of ordinary skill would recognize the economic benefits of applying the elastic intermittently as in the method of Nakakado.

16. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNichols (US 6667085) as evidenced by Morman (US 5226992), or in the alternative, McNichols (US 6667085) as evidenced by Morman (US 5226992) in view of Nease et

al. (US 5705013), as applied to claim 2 above, and further in view of Roessler et al. (US 5399219).

McNichols is silent as to whether the primary fastener material (62) on the web of side panels (110) is cut when web is cut so that each side panel (28) has fastener material (62). It is the position of the examiner that applying a single strip of fastening material to the longitudinal center to a web of side panel material, and subsequently cutting the web to form identical side panels is well known in the art and would have been obvious to one of ordinary skill at the time of the invention. Roessler et al. discloses a method of forming side panels wherein a fastening material is applied down the center of a web of side panel material so that when the web is cut into identical side panel webs, each side panel has fastening material (Fig. 4). It would have been obvious for one of ordinary skill in the art to incorporate a known method of forming side panel webs with fasteners, such as the method of Roessler, into the method of McNichols because such a modification would have been within his technical grasp.

17. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (US 6645190), Nease et al. (US 5705013) and Pohjola (US 5224405) as applied to claim 3 above, and further in view of Surprise et al. (US 6174303).

Olson discloses that the material on the outer surface of the side panel member (302) releasably attaches with fastening members (84, 85) on the body of the diaper in order to create a desired fit on the wearer (Fig. 9), but fails to disclose whether a fastening material could be attached to the side panel member (302) to form a dual fastening system. Surprise et al. (Surprise) discloses a disposable article with a dual

fastening system (Abstract; Fig. 1). Surprise discloses that the fastening system (60) comprises of a set of primary fasteners (62, 64) on the back waist flaps wherein primary fasteners releasably engage with the outer cover (28) of the front waist area and a set of secondary fasteners (66, 68) on the front waist flaps wherein secondary fasteners engage with the inner surface of the rear waist area (36) (Fig. 1-3; column 13, lines 5-64). Surprise teaches that the use of the secondary fasteners provide improved securement of the diaper about the waist of the wearer and provides additional support to maintain the absorbent chassis in contact with the wearer (column 13, lines 42-47).

It would have been obvious to incorporate the teachings of Surprise et al. into the method of the above references combined and use a dual fastening system for the diaper because Surprise teaches that a dual fastening system provides improved diaper fit as well as additional support for the absorbent chassis.

It is the position of the Examiner that it is well known in the art to attach a fastening material on a web of material wherein the fastening material straddles a cut line between individual components, so that when said cut is made, each component has section of fastening material, and would have been obvious to one of ordinary skill at the time of the invention.

18. Claim 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNichols (US 6667085) as evidenced by Morman (US 5226992), or in the alternative, McNichols (US 6667085) as evidenced by Morman (US 5226992) in view of Nease et al. (US 5705013), as applied to claim 2 above, and further in view of Nakakado et al. (US 20040035521).

The references as combined fail to disclose whether the side panel material (116) may comprise of a material that has intermittent elastic sections. Nakakado et al. (Nakakado) discloses a method for producing a web of material with intermittent elastic sections (Abstract). Nakakado discloses that the method comprises of: supplying an elastic member; stretching the elastic member; placing the stretched elastic member so that the elastic member spreads across a plurality of first webs divided in a transport direction; making a part of a second web loose in the transport direction while transporting the second web, thereby forming a loose portion; placing the first webs, on which the elastic member is disposed, on non-loose portions before and after the loose portion of the second web; and cutting the elastic member between adjacent first webs of the plurality of first webs (Fig. 1; paragraph 7). Applying elastics intermittently and only in required areas of the product to be formed allows for material and cost savings in the process. It would have been obvious for one of ordinary skill to incorporate the elastic web forming method of Nakakado into the method of the above references as combined because one of ordinary skill would recognize the economic benefits of applying the elastic intermittently as in the method of Nakakado.

19. Claim 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (US 6645190), Nease et al. (US 5705013) and Pohjola (US 5224405) as applied to claim 3 above, and further in view of Nakakado et al. (US 20040035521).

The references as combined fail to disclose whether the side panel member (302) may comprise of a material that has intermittent elastic sections. Nakakado et al. (Nakakado) discloses a method for producing a web of material with intermittent elastic

sections (Abstract). Nakakado discloses that the method comprises of: supplying an elastic member; stretching the elastic member; placing the stretched elastic member so that the elastic member spreads across a plurality of first webs divided in a transport direction; making a part of a second web loose in the transport direction while transporting the second web, thereby forming a loose portion; placing the first webs, on which the elastic member is disposed, on non-loose portions before and after the loose portion of the second web; and cutting the elastic member between adjacent first webs of the plurality of first webs (Fig. 1; paragraph 7). Applying elastics intermittently an only in required areas of the product to be formed allows for material and cost savings in the process. It would have been obvious for one of ordinary skill incorporate the elastic web forming method of Nakakado into the method of the above references as combined because one of ordinary skill would recognize the economic benefits of applying the elastic intermittently as in the method of Nakakado.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fries et al. (US 5595618) discloses a method of making diapers wherein side panels are cut from a single elastic laminate and subsequently laminated to a chassis web.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER C. CAILLOUET whose telephone number is (571)270-3968. The examiner can normally be reached on Monday - Thursday; 9:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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August 13, 2009